

PLANNING COMMISSION MINUTES

June 14, 2000

CALL TO ORDER:

Chairman Dan Maks called the meeting to order at 7:00 p.m. in the Beaverton City Hall Council Chambers at 4755 SW Griffith Drive.

ROLL CALL:

Present were Chairman Dan Maks, Planning Commissioners Bob Barnard, Betty Bode Sharon Dunham, Chuck Heckman and Vlad Voytilla. Commissioner Eric Johansen was excused.

Senior Planner Steven Sparks, AICP, Associate Planner Colin Cooper, AICP, Assistant City Attorney Ted Naemura and Recording Secretary Sandra Pearson represented staff.

The meeting was called to order by Chairman Maks, who presented the format for the meeting.

VISITORS:

Chairman Maks asked if there were any visitors in the audience wishing to address the Commission on any non-agenda issue or item. There were none.

STAFF COMMUNICATIONS:

Senior Planner Steven Sparks reported that the City of Beaverton had received an appeal from the applicant of the Haggen Store Project on two conditions, specifically the hours of operation and the enclosed loading dock.

OLD BUSINESS:

PUBLIC HEARING:

Chairman Maks opened the Public Hearing and read the format for Public Hearings. There were no disqualifications of the Planning Commission members. No one in the audience challenged the right of any Commissioner to hear any of the agenda items, to participate in the hearing or requested that the hearing be postponed to a later date. He asked if there were any ex parte contact, conflict of interest or disqualifications in any of the hearings on the agenda. There was no response

1 **CONTINUANCES:**

2

3 **A. RZ 99-00020 – CORNELL ROAD REZONE OF TAX LOT 100**

4 Request for approval of a Rezone to change the City's zoning designation from
5 Office Commercial (OC) to Community Service (CS) on an approximately 2-acre
6 parcel located on the north side of Cornell Road, between 167th Place and Twin
7 Oaks Drive. The development proposal is located on Assessor's Map 1N1-31AA,
8 on Tax Lot 100, and is currently zoned Office Commercial (OC). The site is
9 approximately 2.37 acres in size.

10

11 Associate Planner Colin Cooper reported that the applicant has requested that the
12 Public Hearing be continued until July 26, 2000.

13

14 Commissioner Voytilla **MOVED** and Commissioner Barnard **SECONDED** a
15 motion that RZ 99-00020 – Cornell Road Rezone of Tax Lot 100 be continued to
16 a date certain of July 26, 2000.

17

18 Motion **CARRIED** unanimously.

19

20 **B. TA 2000-0004 – TITLE 4 IMPLEMENTATION TEXT AMENDMENT**

21 (Continued from April 12, 2000)

22 The Planning Commission will hear a City-initiated proposal on amending
23 Section 20.15.05.2.B.3. of the Development Code, which would, if approved,
24 limit the amount of retail uses in the Campus Industrial (CI) zone to 60,000 gross
25 square feet of building area. This amendment is proposed to bring the City into
26 compliance with Metro Title 4 provisions.

27

28 Senior Planner Steven Sparks presented the Staff Report and described the Title 4
29 Implementation Text Amendment which had been before the Commission
30 previously, at which time it had been determined that the City had erred in their
31 procedure of notifying the State of Oregon of a pending text amendment. He
32 mentioned that the Land Use Board of Appeals had remanded this and another
33 text amendment back to the City of Beaverton for reconsideration and public
34 hearing. He clarified that the purpose of this particular amendment imposes a
35 limit of 60,000 square feet on retail uses within the City of Beaverton's five
36 development control areas, which are geographic boundaries placed over the
37 City's industrial areas. This amendment was originated for the purpose of
38 bringing the City's Code into compliance with the Urban Growth Management
39 Functional Plan. Concluding his presentation, he offered to respond to any
40 comments or questions at this time.

41

42 Commissioner Heckman questioned if this issue is similar to the City of
43 Portland's denial of a *Costco* on NW Yeon, adding that it appears to involve the
44 same perimeters included in the Staff Report for TA 2000-0004.

45

1 Mr. Sparks responded that he is unable to elaborate on actions of the City of
2 Portland.

3
4 Commissioner Heckman discussed paragraph 2 of page 4 of the Staff Report,
5 specifically the reference to the addition of two limits to the amount of retail uses
6 in the Campus Industrial zone.

7
8 Mr. Sparks clarified these two limits, as follows: 1) no single stand-alone retail
9 use larger than 60,000 square feet; and 2) no combination of smaller retail uses
10 could exceed 60,000 square feet.

11
12 Commissioner Heckman referred to paragraph 4 of page 4, regarding
13 Conformance with Metro Planning Documents, questioning whether Metro
14 suggests variance criteria for uses in excess of the recommended 60,000 square
15 feet.

16
17 Mr. Sparks advised Commissioner Heckman that at another point within the Staff
18 Report, he had detailed what Metro had offered as an alternative to allowing
19 greater than 60,000 square feet, adding that this does not involve a variance
20 procedure. He pointed out that adoption of this amendment as an implementation
21 of Title 4 would establish a "cap" that could not be exceeded.

22
23 Commissioner Heckman commented on paragraph 5 of page 5, expressing his
24 approval of what he described as an excellent analysis prepared by staff.

25
26 Commissioner Heckman referred to paragraph 4 of page 6, regarding Industrial
27 Objectives, specifically questioning the total of all developable industrial property
28 within the City of Beaverton.

29
30 Mr. Sparks informed him that only 7-1/2 acres of industrial property are vacant
31 and developable within the City of Beaverton at this time, adding that this does
32 not include additional property that could be considered redevelopable or
33 underdeveloped. He observed that the areas around Nimbus and Cirrus are
34 among those considered to be of greater redevelopment potential because those
35 parcels could potentially be rezoned into some use other than Campus Industrial.

36
37 Commissioner Heckman expressed his opinion that this particular area is
38 currently intensely developed.

39
40 Mr. Sparks advised Commissioner Heckman that most of the development in the
41 Nimbus/Cirrus area consists of tilt-up single-story flex space, which has a very
42 limited life span, adding that it has been determined that they will reach their
43 limit, at which time redevelopment will be an option.

44
45 Commissioner Heckman questioned when Mr. Sparks anticipates this will occur.

1 Mr. Sparks advised Commissioner Heckman that the Buildable Lands Study had
2 an analysis time line to the year 2017. Mr. Sparks also reminded him that the City
3 of Tigard had completed their Washington Square Regional Center Study and
4 their recommendation had been to rezone the Nimbus/Cirrus area to a multiple
5 use zoning district.

6
7 Commissioner Heckman referred to paragraph 3 of page 9, specifically whether
8 the 30 combined acres as of June 30, 1998 is still valid.

9
10 Mr. Sparks advised him that to his knowledge, there has been no development
11 within these areas over the past two years.

12
13 Chairman Maks referred to an option that Metro offers with regard to the
14 adequate transportation facilities, questioning whether this would be difficult to
15 monitor.

16
17 Mr. Sparks assured Chairman Maks that while the City of Beaverton could
18 perform periodic traffic counts on major roadways within the Campus Industrial
19 areas, it would prove difficult to determine the limitation of those roadways. He
20 mentioned questions staff had concerning the limits, which could be interpreted in
21 several ways, adding that the lack of clarity of the Metro alternatives indicates the
22 necessity of placing a "cap".

23
24 Chairman Maks discussed ability to require that any infrastructure be in place at
25 the time of opening.

26
27 Mr. Sparks expressed his concern with the highest, most intense use, which could
28 be on every parcel in this area and mentioned the Dolan analysis issues and
29 problems connected with an individual being forced to assume responsibility for
30 potential uses.

31
32 Chairman Maks advised Mr. Sparks that his response is that this individual has
33 the option of locating elsewhere. He pointed out that while an applicant is
34 concerned with obtaining a conditional use permit, the City of Beaverton has
35 concerns with traffic and the infrastructure. He referred to page 5 of the Staff
36 Report, expressing his agreement that retail uses are supposed to be supporting
37 and facilitating uses to actually reduce the amount of vehicular miles traveled in
38 specific areas. He questioned why Metro offered this particular option if they are
39 so concerned with the Dolan issue.

40
41 Observing that he is unable to respond for Metro, Mr. Sparks pointed out that uses
42 change and the code change and that sometimes it is impossible to determine
43 these changes ahead of time with any certainty.

44
45 Chairman Maks observed that his intention is for this to be effective both now and
46 later.

1 Mr. Sparks mentioned that Assistant City Attorney Ted Naemura may wish to
2 expand upon a recent legislative provision that allows an applicant to go through
3 the conditional use process, receive conditions, go through City Council, pull their
4 Building Permits, and then go through construction and then say, "I challenge this
5 condition." He referred to a current court case underway in Lincoln City that
6 illustrates this situation.

7
8 Mr. Naemura clarified that this new legislation is also responsible for the addition
9 of the new announcement at the beginning of a Public Hearing that involves a
10 quasi-judicial application regarding challenges to conditions to save issues for
11 circuit court. He described this as a sort of a refocus of issues to ensure that the
12 Public Hearing gets all issues out into the open to allow all parties the opportunity
13 to deal with them. He mentioned that the purpose of this is to hopefully reduce
14 litigation by ambush further down the road.

15
16 **PUBLIC TESTIMONY:**

17
18 **FRANK PARISI**, 1630 SW Morrison, Portland, OR 97205, stated that he is a
19 lawyer representing Home Depot, and introduced **TODD SADLOW**, 1532 SE
20 36th Avenue, Portland, OR 97214, another lawyer representing Home Depot and
21 **CARL ANDERSON**, 50 SW Pine Street #400, Portland, OR 97204, who is
22 Home Depot's broker, representing Commercial Realty Advisors. He pointed out
23 that Home Depot currently has an application for use that would implement the
24 Title 4 criteria, adding that while they were unaware that the City of Beaverton
25 was attempting to implement Title 4, they had met the deadline. He pointed out
26 that if their conditional use permit is obtained, this regulation would serve to
27 eliminate any competitors.

28
29 Chairman Maks advised Mr. Parisi that it is not permissible to discuss Home
30 Depot, square footage or anything remotely connected to any application during
31 this particular Public Hearing, assuring him that he will interrupt any such
32 attempt.

33
34 Mr. Parisi requested clarification of this limitation, and Chairman Maks informed
35 him that the Planning Commission is currently discussing the Title 4
36 Implementation Text Amendment and he does not want to be challenged at a later
37 Public Hearing that they had received information on an application ahead of the
38 scheduled Public Hearing.

39
40 Mr. Parisi assured Chairman Maks that he understands the situation and will
41 attempt to make his comments as generic as possible.

42
43 Chairman Maks advised Mr. Parisi that the bottom line is that the discussion
44 concerns a text amendment and square footage and store information is irrelevant.
45

1 Mr. Naemura pointed out that one issue that is normally present in such a
2 situation that is not present at this time is that the party that could be threatened by
3 ex parte contacts is actually here, adding that the threshold for prejudice by ex
4 parte contact is decreased.

5
6 Chairman Maks emphasized that this does not eliminate the possibility that some
7 individual may file an appeal.
8

9 Mr. Parisi stated that their basic position on the proposed implementation of Title
10 4 is that they are comfortable with the traffic conditions and being obliged to
11 meeting a standard of providing adequate infrastructure for all potential uses
12 within the area. He commented that they do not agree with taking the category of
13 employment zones and applying a ban, preventing them from entering these zones
14 at all. He expressed his opinion that this is actually a reversal of what Metro
15 proposed.
16

17 Mr. Sadlo emphasized that they are not in opposition to Title 4, although in his
18 opinion it is overly broad and lumps significantly different types of uses into the
19 same category. He pointed out that problems are created when some jurisdictions
20 go beyond Title 4, with no adequate basis for their decisions. He admitted that he
21 had been employed as a lawyer for Metro for five years and is not responsible for
22 this, adding that he had gone from the Dark Side and is devoting his life to good.
23 He pointed out that this doesn't exactly fit in with the other elements of the Urban
24 Growth Functional Plan, observing that it is his understanding that this occurred
25 due to a problem in Gresham that has spread throughout the entire region. He
26 referred to a situation in Portland concerning a Costco Store an applicant was
27 attempting to locate in an old warehouse in an industrial area, adding that this
28 historical warehouse is now going to be dismantled because no one was able to
29 utilize it because of Title 4. He pointed out that employment uses are crowding
30 out retail uses, which Metro had determined generated too much traffic to justify
31 the amount of employment that had been created. He stated that Home Depot is
32 impacted by this legislation, pointing out that a typical Home Depot store
33 provides approximately 150 family-wage jobs the first year of operation and over
34 200 family-wage jobs by the third year. He mentioned that the total payroll for
35 the first year equals approximately \$3.4 Million the first year up to \$5 Million in
36 the third year. He expressed his opinion that this is an exceptional level of
37 employment for a use that traditionally occupies an 11.5-acre site.
38

39 Mr. Sadlo observed that they are attempting to adequately address the
40 transportation issues within the code and provide compensation for their fair share
41 of that, emphasizing that they are not seeking lawsuits. He described this as a
42 kind of a "have your cake and eat it too" kind of a law that creates potential
43 liabilities for jurisdictions. He pointed out the necessity of reading Title 4 for
44 what it means and to not to attempt to read more into it than what it does mean.
45 He clarified that Title 4 actually means the implementation of traffic-oriented
46 conditions in employment zones when retail uses over 60,000 square feet are

1 being considered. He maintained that Title 4 is easy to implement in the City of
2 Beaverton, adding that he has provided language that has been adopted and
3 accepted by Metro. He pointed out that traffic analysis such as he is describing
4 have been done for a long time, adding that he can not understand the rationale for
5 going beyond what is required for Metro. Emphasizing that a ban is a terrible
6 way to plan, he commented that the City of Beaverton should attempt to work
7 with Home Depot in their efforts to resolve any problems.
8

9 Chairman Maks advised Mr. Sadlo that his comments concerning a future
10 application are not permissible.
11

12 Mr. Sadlo observed that he has some serious qualms about statements in the staff
13 reports, pointing out that they can not locate the available parcels that have been
14 referred to. He mentioned that they have identified 48 undeveloped acres in the
15 City of Beaverton's CI zone, emphasizing that no parcels of any size are available
16 within the commercial zones that would enable anyone to develop a 60,000
17 square foot store. He emphasized that they are not Costco or Target, but a
18 building supply and lumber outlet traditionally located in an industrial area. He
19 pointed out that the items that they sell are big and bulky and they cater to an
20 industry on a wholesale level as well as consumers. He expressed his opinion that
21 this use is not inappropriate for an industrial area, adding that they are an
22 employment use, they are like an industrial use, and they use a warehouse that
23 they are attempting to make appear to be not like a warehouse to serve other
24 needs in the area. He described Home Depot's efforts at obtaining a location that
25 will satisfy the City of Beaverton's requirement as well as serve their own needs.
26

27 Chairman Maks expressed appreciation to Mr. Parisi and Mr. Sadlo for their
28 presentation, observing that he has read the materials they submitted and that has
29 already blown the Home Depot information early issue.
30

31 Commissioner Heckman stated that he had not had the opportunity to read their
32 written materials, adding that he would have preferred to have had the material
33 several days earlier, rather than dumped on him at the last minute.
34

35 Mr. Sadlo apologized, noting that he had attempted to submit the materials as
36 early as possible.
37

38 Commissioner Heckman observed that it is difficult to read and comprehend
39 written materials while listening to someone testify.
40

41 Commissioner Heckman referred to Mr. Sadlo's comment that Home Depot
42 provides 150 family wage jobs, requesting clarification of the term family wage.
43

44 Mr. Parisi advised Commissioner Heckman that although this term is used
45 loosely, it applies to a position that pays approximately \$26,000 annually, not
46 including benefits.

1 Commissioner Heckman referred to a retail business occupying 60,000 square
2 feet of a building, specifically how much land would be required to provide for
3 this.

4
5 Mr. Anderson observed that this is dependent upon the particular category of
6 business, adding that the rule of thumb for most retail businesses is approximately
7 a 25% coverage ratio – every four feet of land allows for one foot of building.
8 This provides the acceptable parking standard for the industry – approximately
9 five parking spaces per thousand square feet of area.

10
11 Commissioner Heckman described a retail structure of approximately 120,000
12 square feet, observing that this would require approximately 500,000 feet of
13 property.

14
15 Mr. Anderson informed Commissioner Heckman that he is correct, adding that
16 500,000 square feet is in excess of ten acres. He pointed out that the dilemma of
17 the situation is that ten-acre parcels are not generally found in commercial zones.

18
19 Commissioner Heckman questioned whether these ratios remain the same for
20 multi-level structures.

21
22 Mr. Anderson advised Commissioner Heckman that the parking ratio remains the
23 same, adding that a multi-level structure does not change the total parking
24 requirement. He pointed out that locating a two-level store on five acres would
25 result in a parking garage.

26
27 Commissioner Heckman questioned whether this possibility has been explored.

28
29 Chairman Maks reminded the applicant that a specific application could not be
30 discussed.

31
32 Commissioner Heckman emphasized that he would like to know whether this has
33 been done in any business.

34
35 Mr. Anderson advised Commissioner Heckman that they are discovering that this
36 is not unusual in the City of Beaverton, and that they face these same challenges
37 in other communities and they are searching for solutions.

38
39 Commissioner Heckman emphasized that he is curious whether this has been
40 done successfully anywhere.

41
42 Mr. Anderson advised Commissioner Heckman that he believes that this has been
43 done at several locations nationally.

44
45 Commissioner Heckman specified that he is referring to major metro areas.
46

1 Mr. Anderson advised Commissioner Heckman that this format would be found
2 somewhere like New York City – very intense areas such as downtown San
3 Francisco.

4
5 Commissioner Heckman reminded Mr. Sadlo that he would have appreciated the
6 opportunity to be able to read this information prior to his testimony.

7
8 Commissioner Bode questioned the national failure rate of businesses requiring
9 over 100,000 square feet.

10
11 Mr. Anderson observed that this rate is almost nil, adding that occasionally a
12 major national corporation will go bankrupt, adding that generally speaking, the
13 large format retailer tends to be a national corporation – publicly-owned and well-
14 financed.

15
16 Commissioner Voytilla referred to the ratios, specifically his statement that for
17 every four feet of area, one foot would be designated for the structure.

18
19 Mr. Anderson agreed, observing that this is a traditional formula.

20
21 Commissioner Voytilla referred to the 60,000 square foot example, observing that
22 the total site size would be approximately 240,000 square feet, rather than the
23 500,000 square feet that had been specified.

24
25 Mr. Anderson advised Commissioner Voytilla that the 500,000 square feet related
26 to the 100,000 square foot example.

27
28 Commissioner Voytilla referred to Mr. Sadlo's testimony and memorandum,
29 specifically the suggested text that he had stated had been used by other
30 jurisdictions to satisfy Metro's Title 4 requirements.

31
32 Mr. Sadlo advised Commissioner Voytilla that this language had been included
33 within the ordinance adopted by the City of Portland, adding that other conditions
34 that they had objected to were subjective, rather than objective.

35
36 Commissioner Voytilla requested clarification that the City of Portland is the only
37 jurisdiction that had adopted this particular language.

38
39 Mr. Sadlo informed Commissioner Voytilla that he had taken this language
40 directly from the City of Portland's ordinance.

41
42 Commissioner Voytilla referred to discussion regarding familiarity with sites
43 within the Beaverton area, questioning whether he had commissioned a particular
44 group to review this situation.

45

1 Mr. Anderson explained their process, observing that they serve a very specific
2 target area and population, which identifies the general location of where they
3 would look for the site. He mentioned that they had looked at everything along
4 the Highway 217 corridor at the major intersection areas that could accommodate
5 this type of use.

6

7 Commissioner Voytilla mentioned that there appears to be a question of whether
8 the City has adequate land available.

9

10 Mr. Anderson referred to a list of vacant lands inventory.

11

12 Chairman Maks referred to the language adopted by the City of Portland,
13 expressing his opinion that it is superior to that of the Title 4 document from
14 Metro, adding that he might include something a little more subjective.

15

16 Mr. Sadlo informed Chairman Maks that they would be happy to provide
17 suggestions in this effort.

18

19 Chairman Maks stated that he agrees with staff that the traffic in the CI zones is
20 excessive because of the lack of a proper mix of supporting retail uses in those
21 areas and because a restaurant can't make it on lunch alone. He mentioned that
22 although an applicant might be willing to install traffic devices, it may affect the
23 City's ability to have a proper mix in the future, to promote the policies of the
24 Comprehensive Plan to reduce the average daily trips. While he knows what does
25 and what doesn't work and understands the policies, he does not want to limit or
26 harm the larger retail uses.

27

28 Emphasizing that he is not referring only to employees, Commissioner Heckman
29 questioned how many people would typically be using this 60,000 square footage
30 on any given day.

31

32 Mr. Anderson advised Commissioner Heckman that his area of expertise deals
33 strictly in the realm of retail and shopping centers, adding that it would be totally
34 inappropriate for him to speculate on an unfamiliar issue.

35

36 Mr. Parisi referred to a comparative study with the City of Portland, observing
37 that this had indicated that a strip shopping center generates far more trips than a
38 comparable sized large retailer. He mentioned that the peak p.m. trips calculated
39 for Home Depot is approximately 450 vehicles.

40

41 Commissioner Heckman clarified that he would like this same information
42 involving an office structure of this size.

43

44 Mr. Parisi advised Commissioner Heckman that he assumed he meant retail use,
45 and he does not have the information for an office structure.

46

1 Commissioner Bode commended Mr. Anderson for being the first expert she has
2 ever seen capable of admitting to any sort of limitation in terms of not having the
3 answer to a question, asking if he would be willing to talk to the fish people.
4

5 Mr. Sparks indicated that he had done some research today regarding employment
6 generation in which he had found data ten years old that provided employment
7 totals by square footage on a variety of different uses. He mentioned that he had
8 compared this data to the types of uses permitted in the Campus Industrial Zone,
9 including manufacturing, assembly, fabrication, processing and packing types of
10 uses. He reported that general manufacturing has an employee ratio of one per
11 seven hundred square feet of gross floor area, while electrical manufacturing,
12 which appears to be a trend in Washington County, has an employee ratio of one
13 per three hundred fifty square feet of gross floor area. Storage facilities average
14 one employee per 20,000 square feet of gross floor area, and distribution uses
15 averages one employee per 2,500 square feet of gross floor area. He mentioned
16 that 60% of the CI zones are permitted to have general administrative offices and
17 professional services, with a ratio of one employee per three hundred square feet
18 in offices and a ratio of one employee per three hundred fifty square feet for
19 professional services.
20

21 Mr. Sparks discussed ratios for retail use, noting that basic retail averages one
22 employee per seven hundred square feet, while "big box" retail averages one per
23 thousand to twelve hundred square feet, which was consistent with the
24 employment ratios offered in testimony by Mr. Parisi. He pointed out that retail
25 use is permitted only in the CI zoning districts, adding that this limits the search
26 for available land. He disagreed with an earlier statement that a ban on retail use
27 is bad planning, emphasizing that such a ban is clearly stating what the City wants
28 to occur in a specific zone. Specifically, retail is not permitted within that zone
29 and should be located elsewhere in the City. He pointed out that this proposal
30 does not indicate a universal ban, but rather an indication that retail uses of a
31 certain size should not be located within a certain area.
32

33 Chairman Maks observed that he has an understanding of Mr. Sparks'
34 presentation regarding the City's intentions for a particular zone and that some
35 uses are higher employment generators. He expressed his concern with making
36 certain that if the City of Beaverton experiences a need for additional residences,
37 sites will be available. He discussed the modification of the proposed language
38 and a double check of the existing Comprehensive Plan policies and the
39 importance of not creating an impact. He mentioned that he would like to have a
40 land inventory of where he could locate a 95,000 square foot Maks' Market.
41

42 Commissioner Heckman suggested that he would like a continuance of the Public
43 Hearing, adding that he would like to obtain the inventory of available lands for
44 use of 100,000 square foot retail space, as well as the information indicating how
45 this fits in with the policies of the Comprehensive Plan.
46

1 Commissioner Bode stated that she would like data regarding the livable wage in
2 light industrial areas, referring to the Federal standard of a family living wage,
3 which is \$24,000.

4
5 Chairman Maks pointed out that this might not be included in the criteria.

6
7 Commissioner Bode expressed her opinion that wages are included in the criteria.

8
9 Mr. Naemura indicated that employment areas are included in the criteria and
10 relevant to the issue.

11
12 Chairman Maks pointed out that no where in the criteria could a decision be based
13 upon the difference between a \$26,000 job and a \$20,000 job, emphasizing the
14 necessity of watching where you are going with this issue.

15
16 Mr. Sparks assured Commissioner Bode that while he is able to obtain the
17 information regarding the median income, he has concern with the fact that the
18 Federal and State governments have established minimum wages, and livable
19 wages have little relevance.

20
21 Commissioner Barnard questioned the possibility of capping a CI zone at 60,000
22 square feet, and specifically whether the road structure in these zones is
23 developed to handle the 60,000 square feet, but because of existing other uses in
24 the area, this may not be feasible.

25
26 Mr. Sparks advised Commissioner Barnard that he would need to consult with the
27 Transportation Engineer and get a response back to him.

28
29 Chairman Maks indicated that supposedly if planning has been done properly, the
30 transportation infrastructure is available to support such a planned use.

31
32 Commissioner Barnard pointed out that we are considering capping the CI zoning
33 at 60,000 square feet.

34
35 Chairman Maks clarified that we are not capping the CI zoning at 60,000 square
36 feet, adding that we are capping retail uses within CI zoning at 60,000 square feet.

37
38 Commissioner Barnard noted that the transportation infrastructure might not
39 support this use.

40
41 Chairman Maks stated that Commissioner Barnard had made a valid observation.

42
43 On question, Commissioner Dunham stated that she would like to refer back to
44 the available land inventory.

45

1 Commissioner Voytilla indicated that he favors a continuance for this Public
2 Hearing, adding that he would like to have some input regarding the proposed
3 language provided in this memorandum.

4

5 Chairman Maks would like input from transportation, adding that he would like
6 legal to review the possibility of an extension of the window to a five or ten year
7 period of time, such as a Comprehensive Plan Amendment. He commended staff
8 for a good Staff Report.

9

10 Commissioner Barnard **MOVED** and Commissioner Voytilla **SECONDED** a
11 motion that TA 2000-0004 – Title 4 Implementation Text Amendment be
12 continued to a date certain of August 23, 2000.

13

14 Commissioner Heckman suggested that the minutes should reflect a specific
15 reason for the continuance.

16

17 Chairman Maks observed that the testimony reflects the rationale behind the
18 continuance, adding that the public needs the opportunity to review and respond
19 to new evidence and input that will be provided.

20

21 Motion **CARRIED** unanimously.

22

23 8:13 p.m. – 8:22 p.m. -- break.

24

25 Commissioner Bode left at 8:18 p.m.

26

27 **C. TPP 99-00008 – WATERHOUSE 5 SUBDIVISION MODIFICATION**

28 (Continued from June 7, 2000)

29 The following land use application has been submitted for property located at the
30 SW corner of SW Spring Water Lane and SW 167th Avenue. The site is zoned
31 Urban Standard Density (R-7) and is identified as Washington County Assessor's
32 Map 1S1-06AA, Tax Lot 6100. The applicant requests Tree Preservation Plan
33 approval to remove trees within an area identified as a "significant grove" on
34 Beaverton's Inventory of Significant Trees. The Tree Preservation Plan is
35 proposed with this project to evaluate the removal of all the trees as a result of the
36 condition of the trees and the proposed residential development.

37

38 Mr. Russell observed that a letter from the Five Oaks/Triple Creek Neighborhood
39 Association Committee had requested a continuance of this Public Hearing.

40

41 Mr. Cooper observed that a neighborhood meeting had been held at the site,
42 noting that all procedures have been followed in accordance with legal
43 requirements. He stated that the application can stand on its own, adding that any
44 consideration for continuance is at the discretion of the Planning Commission.

45

1 Chairman Maks observed that the NAC has requested continuance, questioning
2 whether they are aware that this particular application is within the jurisdiction of
3 the 120-day rule.

4
5 Mr. Cooper advised Chairman Maks that the applicant had signed a waiver of the
6 120-day rule for this particular application.

7
8 Commissioner Heckman mentioned that this request for a continuance comes
9 from the Chairman of the NAC.

10
11 Mr. Naemura informed Chairman Maks that the Planning Commission has the
12 discretion to make a decision now for a continuance or later on during the
13 proceedings.

14
15 Chairman Maks stated that he understood that he has to act on a request for a
16 continuance immediately.

17
18 Mr. Naemura advised him that while he has to act on this request, it could be at
19 any time prior to the closure of the evidentiary hearings.

20
21 Commissioner Dunham observed that several members of the audience have been
22 present and sat through a previous application, suggesting the possibility of
23 hearing the Staff Report and allowing public testimony prior to considering a
24 continuance.

25
26 Chairman Maks observed that without even hearing from the applicant, he is not
27 yet certain whether a continuance will be approved.

28
29 Commissioner Heckman questioned whether the NAC is requesting that this
30 application be brought back before them.

31
32 Chairman Maks requested that Mr. Russell respond to Commissioner Heckman's
33 question.

34
35 **PAT RUSSELL**, 16308 SW Estuary Drive, #208, (Kings Court Apartment
36 Homes), Beaverton, OR 97006, discussed the purpose of this request for a
37 continuance of this Public Hearing. He pointed out that the NAC had been caught
38 off guard on this matter and had discussed the issue for the first time the previous
39 night when the Chairman and Vice-Chairman both received their copies of this
40 Staff Report. He mentioned that they had not had adequate time with which to
41 review the application. He observed that while this NAC is a pretty loose-knit
42 group and has not typically taken formal positions on applications, is NAC has
43 typically not taken formal positions on applications, they strive toward consensus
44 as opposed to confrontation.

45

1 Mr. Cooper referred to a companion land use application for a subdivision
2 modification, adding that a condition requires a redesign of the storm water
3 collection system going out to a different street than what had been proposed and
4 that a continuance will not necessarily create any problems for the applicant.

5
6 Chairman Maks observed that he would like to have the Public Hearing and
7 continue it, if necessary, following public testimony.

8
9 Commissioner Heckman expressed concern with the great emphasis that has been
10 placed on input from the NACs, adding that following a continuance, they still
11 may not come forward with any solid recommendation one way or another.

12
13 Commissioner Dunham expressed her agreement with Chairman Maks' opinion
14 that the Public Hearing should be opened and possibly continued following public
15 testimony.

16
17 Commissioner Barnard also expressed his agreement with Chairman Maks,
18 observing that they should proceed with the Public Hearing.

19
20 Expressing his concern with the letter from the NAC, Commissioner Voytilla
21 expressed his opinion that the NAC should be provided adequate opportunity for
22 involvement in this issue.

23
24 Chairman Maks pointed out that the NAC had received adequate notice.

25
26 Commissioner Voytilla observed that he is only stating what the letter indicates,
27 adding that he is in favor of a continuance, although he has no problem with
28 opening the Public Hearing at this time.

29
30 Commissioner Heckman expressed his agreement with Commissioner Voytilla,
31 stating that he would like assurance that the Public Hearing will be continued.

32
33 Chairman Maks noted that if Commissioners want the assurance of a continuance,
34 they should vote on it now, adding that it is necessary to act on this request for a
35 continuance, either now or later.

36
37 Commissioner Heckman suggested that if the Public Hearing is open, it is
38 possible that the NAC will be influenced by what their representative observes
39 during the Public Hearing. He noted that this is beyond the scope of the normal
40 routine, adding that he has come prepared to hear this application.

41
42 Chairman Maks indicated that he had come prepared to hear the application also.

43
44 Commissioner Barnard suggested that it is necessary to make every effort to be
45 certain that either side is better prepared to state their position.

46

1 Chairman Maks indicated that he will open the Public Hearing and the
2 Commissioners can act on a continuance at a later time.

3
4 Commissioner Dunham questioned the possibility of a staff representative making
5 a presentation to this NAC.

6
7 Mr. Cooper indicated that this is possible, requesting a formal request to the
8 Planning Director.

9
10 On question, Mr. Cooper informed Chairman Maks that no film of the site is
11 available.

12
13 On question, Commissioners Barnard, Dunham, Voytilla and Heckman and
14 Chairman Maks indicated that they had visited the site.

15
16 Mr. Cooper presented the Staff Report and described the purpose of this
17 application for the removal of all of the trees on this particular tract in order to
18 allow the division of the tract into three parcels for the construction of single-
19 family homes. He provided a brief history of the site, noting that the City had
20 adopted a significant tree grove – Tree Grove No. 28 – which is located on this
21 site, although the tract itself had nothing to do with tree preservation. At some
22 point in the process it was determined that a wetland was present, at which time
23 an agreement was made with the developer that three lots would be converted into
24 a tract. The ownership of these this tract would be retained by the developer until
25 such time that mitigation could occur off site, providing them with the
26 opportunity for development, which has now occurred. This application has
27 actually been before us for some time, although the criteria are difficult to
28 determine. Staff has reviewed the applicant's request to remove all vegetation
29 from the site, fill the wetland and construct housing pads. The City is requesting
30 the preservation of several Oregon White Oak Trees and that the applicant
31 redesign the storm water quality swale and water collection system. Concluding
32 his presentation, he stated that he is available for comments or questions.

33
34 Commissioner Dunham referred to pages 9 and 10 of the Staff Report, noting that
35 the language indicates that both four trees and five trees are scheduled for
36 preservation.

37
38 Mr. Cooper advised Commissioner Dunham that four trees is the correct amount.

39
40 Commissioner Dunham referred to the Holdstad Report, which indicated 49 trees.

41
42 Mr. Cooper assured her that although he had referenced 45 trees, 49 trees are
43 correct.

44
45 Commissioner Dunham referred to another report that had indicated several other
46 trees for preservation.

1 Mr. Cooper informed her that this is the report of the City arborist.

2

3 Commissioner Dunham questioned whether Mr. Cooper has any comments
4 regarding Tree No. 18 and Tree No. 39.

5

6 Mr. Cooper explained that these particular trees are situated more in the center of
7 the building pads and are less of a representation of specimen trees, adding that
8 some discretionary decisions had been made. He mentioned that a continuance
9 would provide an opportunity to reevaluate the feasibility of preserving more
10 trees. He stated that as he recalls, those particular trees were not as viable for
11 retention because of their location.

12

13 Commissioner Dunham referred to page 5 of the Staff Report, specifically the
14 reference that to satisfy the plat note the applicant has identified a wetland
15 mitigation site along Beaverton Creek. She mentioned that the Shapiro report of
16 March 7, 2000 and notice of a restoration project along Beaverton Creek,
17 questioning whether that is still under consideration.

18

19 Mr. Cooper advised Commissioner Dunham that in essence, this is somewhat
20 background information on the wetland mitigation, adding that this is the primary
21 mitigation site identified by the applicant. He noted that the Beaverton Creek area
22 would be a further enhancement of the work that the wetland conservancy has
23 already done.

24

25 Commissioner Dunham requested clarification of the DSL ratios, specifically the
26 three to one ratio, indicating that a 1.5-acre wetland will be compensated in the
27 amount of 4.5 acres.

28

29 Mr. Cooper informed Commissioner Dunham that although he is no wetland
30 mitigation expert, he believes this ratio is correct.

31

32 Chairman Maks observed that the ratios differ, depending upon the quality of the
33 wetland and whether the mitigation will be done on-site or off-site.

34

35 Commissioner Dunham questioned whether the ratio is one to one for the basal
36 measurement mitigation for replacement.

37

38 Mr. Cooper informed Commissioner Dunham that the City would be requiring
39 something above and beyond, adding that City requirement will not prevent DSL
40 from imposing their own requirements.

41

42 Commissioner Dunham referred to drainage, observing that she understands that
43 there is an issue regarding standing water due to the fact that this particular lot is
44 below grade of adjacent property. She mentioned that several neighbors have
45 submitted letters regarding a particular ditch and requested clarification.

46

1 Mr. Cooper observed that this situation is difficult because many of the
2 components are connected in some ways while not connected in others. He
3 pointed out that the storm water runoff system is not really part of the tree
4 preservation plan, other than justification for the removal of trees. The issue of
5 the standing water will be addressed through the subdivision modification, which
6 is when the fill material and storm water system will be installed.

7
8 Chairman Maks referred to the history of this area, specifically how this particular
9 stand of trees is situated at this time.

10
11 Mr. Cooper informed Chairman Maks that this stand of trees is simply standing
12 there as a field check, adding that during the final plat process, the applicant had
13 submitted an application at which point the inspector had called and reported a
14 wetland.

15
16 Chairman Maks referred to the initial Tree Preservation Plan.

17
18 Mr. Cooper advised Chairman Maks that there had been no initial Tree
19 Preservation Plan, adding that in 1986 there had been no significant groves.
20 However, subsequent to the approval of that preliminary plat, the City had
21 adopted an inventory, which included a few specimen trees along the northern
22 property line in the final plat process. He mentioned that this particular stand of
23 trees is not in any way associated with a tree preservation plan, adding that it is
24 simply a wetland tract.

25
26 Chairman Maks specified that he is attempting to determine a specific rationale
27 for preserving this particular stand of trees.

28
29 Mr. Cooper advised Chairman Maks that this case simply involves a Planning
30 Director's Decision on the final plat between the developer, the applicant, and the
31 staff, providing that a tract would be created to preserve wetlands. He stated that
32 the recorded plat includes no specific note that provides it shall be preserved for
33 any particular utilization -- it is simply preserved for the ownership of the
34 applicant.

35
36 Chairman Maks requested clarification of whether the applicant had agreed to set
37 aside this area as a wetland tract.

38
39 Mr. Cooper advised Chairman Maks that this is correct.

40
41 Commissioner Voytilla referred to page 5 of the Staff Report, specifically
42 reference to Grove No. 28, observing that the Staff Report indicates that this
43 City's Tree Inventory Grove was adopted in 1988, while the copy of the plat
44 indicates that this had been adopted in 1993.

1 Mr. Cooper clarified that this is not the tree preservation tract, but the remnant of
2 that grove, adding that it is up to the discretion of the Planning Commission
3 whether or not to allow the applicant to remove the trees.
4

5 Chairman Maks observed that because this has now been identified as a
6 significant grove, the area also falls within the 5% rule, adding that the applicant
7 can only be required to preserve up to 5% of the trees.
8

9 Mr. Cooper indicated that this has been the policy established by the Tree
10 Preservation Plan, adding that this is expected to be reviewed by the CRAC in
11 several weeks.
12

13 Chairman Maks pointed out that it is necessary to deal with this particular
14 application under the existing code, and requested clarification that the wetland
15 mitigation is not occurring all within the City of Beaverton.
16

17 Mr. Cooper observed that the wetland mitigation site is currently Beaverton
18 Creek, adding that it is 100% within the City at this time.
19

20 Chairman Maks expressed his disagreement with the practice of filling a wetland
21 in Beaverton and mitigating it in Forest Grove.
22

23 Commissioner Heckman expressed his opinion that it is odd how this all came
24 about, and referred to page 8 of the Staff Report, specifically raising the finished
25 floor elevation of the houses to two feet above the sidewalk. He questioned how
26 trees could be preserved while adding that amount of dirt.
27

28 Mr. Cooper advised Commissioner Heckman that a revised, more specific,
29 grading plan would be necessary, indicating how those four particular trees will
30 be preserved. He expressed his opinion that it is possible to keep that site back
31 away from the root areas of those trees for preservation purposes.
32

33 Commissioner Heckman pointed out that he does not understand how this is
34 feasible with the interior trees.
35

36 Mr. Cooper agreed with Commissioner Heckman that the interior trees present
37 more of a challenge.
38

39 Commissioner Heckman referred to the 5% rule, specifically what 5% of this total
40 area would include.
41

42 Mr. Cooper pointed out that the 80% density rule and preservation of 5% of the
43 trees presents two conflicting policies.
44

1 On question, Mr. Cooper informed Chairman Maks that since the text has been
2 amended to void any minimum requirement, technically the applicant could
3 submit an application for a planned unit development on these three lots.
4

5 Chairman Maks requested clarification of whether the applicant could maintain a
6 density of three units.
7

8 Mr. Cooper advised Chairman Maks that this is possible in theory, adding that it
9 is his understanding that this would be contrary to the applicant's wishes as well
10 as those of the neighborhood. He mentioned that the neighborhood had made it
11 relatively clear that they want homes of a similar size, scale and development
12 style of the existing homes.
13

14 Chairman Maks referred to the 80% density rule and the requirement allowing the
15 removal of all but 5% of the trees, adding that although the process could be
16 facilitated with a planned unit development, the neighborhood is opposed to
17 anything that is different.
18

19 Observing that this involves a sensitive site, Mr. Cooper pointed out that a lot has
20 been expected of the applicant and mitigation greater than what is typically
21 required is also expected. He mentioned that this does not include the street trees,
22 which the applicant had failed to plant, as part of their original obligation, adding
23 that the City of Beaverton has pursued this issue through code services. He stated
24 that although the neighbors would like to see the street trees planted, there is
25 greater concern with the water. He explained that while a lovely green space is
26 involved, this is not necessarily viewed by the neighborhood as an absolute
27 amenity, with the exception of a letter received by Mr. Strobeck that clearly
28 considers it very differently.
29

30 Commissioner Heckman requested clarification of what the arborist had done
31 with the actual survey, which he indicated is dated February 16, 2000.
32

33 Observing that the applicant may have this information, Mr. Cooper mentioned
34 that because the arborist indicated standing water on the site, he assumes this
35 occurred during the winter. He pointed out that the arborist had also indicated
36 that each of these trees should be removed.
37

38 Commissioner Heckman noted that the City Arborist's report mentions habitat,
39 adding that he finds no mention of any creatures that actually inhabit this area.
40 Observing that the area appears to be a prime site for winged creatures, he
41 questioned whether nocturnal animals are present.
42

43 Noting that he assumes this is true, Mr. Cooper indicated that he does not have the
44 data to substantiate this. He mentioned that he had hoped that Colin McClaren,
45 the applicant's wetlands expert, would be present to address this issue more
46 specifically.

1 Commissioner Heckman referred to street trees that had not been installed,
2 observing that this text amendment provides that if an applicant fails to meet all
3 obligations in one project they will not be permitted to begin any other projects
4 within the City of Beaverton. He requested clarification of whether the City
5 Council has adopted this text amendment.

6

7 Mr. Cooper informed Commissioner Heckman that he does not know the answer
8 to this very good question.

9

10 Mr. Naemura advised Commissioner Heckman that the City Council has not yet
11 adopted this provision.

12

13 Chairman Maks expressed his opinion that this should have been adopted long
14 ago.

15

16 Commissioner Heckman requested clarification of whether an applicant is legally
17 bound by the application date or the date this text amendment is adopted by the
18 City Council.

19

20 Mr. Naemura clarified that if that particular provision is adopted, the ordinance
21 will not be applicable to previous applications.

22

23 Commissioner Heckman stated that he is unsure whether consideration had been
24 given to making this provision retroactive, adding that he has several questions
25 for both the City Arborist and the applicant's arborist, neither of which are
26 present.

27

28 On question, Mr. Cooper advised Commissioner Heckman that although this was
29 an obligation of the developer, the Waterhouse Subdivision street trees had never
30 been planted.

31

32 Chairman Maks observed that the Planning Commission has been hearing about
33 those particular street trees for years.

34

35 Commissioner Barnard questioned the source of the documentation providing for
36 the applicant to develop this parcel at a later date.

37

38 Mr. Cooper responded that because the individual simply owns the land, adding
39 that because no recorded document prohibits development, the applicant retains
40 the property rights for this development so long as environmental concerns are
41 addressed.

42

43 Commissioner Barnard questioned whether this had perhaps been set aside in an
44 agreement with the Senior Planner who had been involved with the property at the
45 time.

46

1 Observing that he had conferred with this individual, Mr. Cooper informed
2 Commissioner Barnard that he had also reviewed the final plat microfiche for this
3 subdivision and discovered a handwritten note from the Senior Planner indicating
4 that the applicant had agreed to set aside three lots for wetland mitigation at a
5 later time.

6
7 Chairman Maks referred to No. 10. Conditions Imposed Upon Tract "L" are
8 defined in Protected Covenants.

9
10 Mr. Cooper advised Chairman Maks that protected covenants include the
11 applicant retaining the rights for development.

12
13 On question, Mr. Cooper informed Chairman Maks that he does not have a copy
14 of the protected covenants available at this time.

15
16 Commissioner Heckman questioned whether protected covenants run with the
17 land or are specific to a particular developer.

18
19 Mr. Cooper requested clarification of which tract Commissioner Heckman is
20 referring to.

21
22 Mr. Voytilla indicated on the map the tract to which the Commissioners are
23 referring.

24
25 Commissioner Barnard expressed his concern with the lack of guidelines
26 providing that mitigation for a wetland needs to occur within a specific area.

27
28 Mr. Cooper explained that jurisdictional wetlands are under the jurisdiction of the
29 Department of State Lands (DSL) and the Army Corps of Engineers, they
30 supercede the authority of the City of Beaverton.

31
32 Commissioner Barnard referred to the Beaverton Creek site, specifically whether
33 this is entirely funded by the developer.

34
35 Mr. Cooper advised Commissioner Barnard that he is correct that the developer is
36 funding the Beaverton Creek site.

37
38 Commissioner Barnard expressed his opinion that the developer is being required
39 to take care of trees he had already been obligated to address, expressing his
40 concern that this may appear to involve a potential trade-off.

41
42 Commissioner Barnard referred to Exhibit 17 from Mr. and Mrs. Carlson,
43 regarding flooding of adjoining properties, specifically their comment that some
44 individual had taken action to dry the area up.

45

1 Chairman Maks advised Mr. Cooper that this discussion of the wetlands is not the
2 issue, emphasizing that the issue is the Tree Preservation Plan.

3
4 Mr. Cooper pointed out that he had mentioned this at the beginning of the
5 discussion, agreeing that the discussion had wandered from the subject.

6
7 Chairman Maks observed that he had allowed this wandering, adding that this is a
8 quasi-judicial action and it is necessary for him to make certain that this is
9 actually what is discussed.

10
11 Commissioner Voytilla referred to the City Arborist's recommendation for
12 preservation, specifically a discrepancy in the amount of trees that is to be
13 preserved.

14
15 Mr. Cooper mentioned that he indicated four of the six that the City Arborist had
16 recommended be preserved, adding that the other two includes one that is not
17 feasible to retain in the center of the lot and one on the edge of the lot that can be
18 added back in.

19
20 Commissioner Voytilla referred to Shapiro's map, Exhibit 4, which appears to
21 provide the most accurate mapping of these trees, observing that his site visit had
22 given him the impression that the trees appear to be clustered more to the west of
23 the lots.

24
25 Mr. Cooper concurred with Commissioner Voytilla's general observation,
26 although he had not actually measured the map.

27
28 Commissioner Voytilla discussed the removal of the trees, and pointed out the
29 tremendous potential of damage to the remaining trees, particularly the roots.

30
31 Mr. Cooper advised Commissioner Voytilla that he had discussed this issue with
32 the City Arborist who had expressed his opinion that these particular oak trees
33 would be capable of withstanding this procedure.

34
35 Commissioner Voytilla observed that this has not been his experience, adding that
36 he concurs with Commissioner Heckman and wishes that the arborist was
37 available to discuss this issue.

38
39 Commissioner Voytilla referred to mitigation of the school site, specifically
40 whether this mitigation has the potential to create problems for maximum
41 utilization of the school property.

42
43 Mr. Cooper informed him that the mitigation is outside the grove, adding that a
44 Design Review will be done through which all existing trees will be inventoried
45 and that additional conditions could be imposed during the Design Review
46 process.

1 Commissioner Voytilla noted that his observation had revealed that the trees are
2 in pretty good health. He pointed out that often the addition of only a small
3 amount of soil or a change in the way the water is channeled could destroy a tree.
4 He discussed a catch basin at the north end of the site, noting that he is curious
5 whether this particular water flow provides a supplement or presents a potential
6 flood situation that will be added to the storm drainage system and expressed
7 concern with potentially creating a water problem elsewhere.

8
9 Commissioner Heckman questioned how one can adequately regrade this area,
10 expressing his opinion that this would involve moving at least three feet of soil
11 around those trees, which is not feasible.

12
13 Mr. Cooper advised Commissioner Heckman that the engineers had indicated that
14 the would not fill to that rear corner where the oak trees are located, adding that
15 this area would remain at its native grade and that a catch basin would be
16 necessary.

17
18 Commissioner Heckman referred to Condition No. 1, which stipulates that this
19 must be done.

20
21 Chairman Maks requested clarification of the process following the approval of
22 the Tree Preservation Plan, specifically whether these wetlands and water issues
23 can be addressed at another stage of the process.

24
25 Mr. Cooper advised Chairman Maks that these issues would be addressed in the
26 Subdivision Report, adding that these issues and concerns will be taken into
27 consideration in their deliberation at that time.

28
29 Chairman Maks referred to the subdivision issue, questioning specifically whether
30 approval is administrative.

31
32 Mr. Cooper informed Chairman Maks that the subdivision issue is an
33 administrative decision made by the Planning Director. On question, he added
34 that this is a Type 2 decision.

35
36 Chairman Maks observed that if this type 2 decision is appealed, it would come
37 back to the Planning Commission.

38
39 **APPLICANT:**

40
41 **MIKE PRUITT**, 5200 SW Macadam Avenue, Suite 580, Portland, OR, 97201,
42 Land Use Planning Consultant and Wetland Scientist representing Harper Houf
43 Righellis, Inc., observed that the planned unit development approach was not
44 feasible because of USA's new corridor vegetative width standards, which
45 involved an "all or nothing deal".
46

1 Chairman Maks assured Mr. Pruitt that he understands this particular situation.

2
3 Mr. Pruitt mentioned references to a ditch, observing that there is no ditch, but a
4 storm line to help draw water off of the surface of the property, adding that the
5 drains will be comparable to golf course drains, leading to an eight-inch storm
6 line that connects directly to an existing storm system. He mentioned that the
7 pipe has been sized to accommodate runoff from the entire neighborhood, adding
8 that most of the yard runoff ends up on this parcel. Observing that this initially
9 wet site is now even wetter, he mentioned that the water just collects at this site.
10 He referred to concerns with excavation activities, noting that in order to actually
11 build houses on this site, it will be necessary to actually dig out and remove
12 organics, which are not appropriate under the homes, from the site. He mentioned
13 that this will create quite a disturbance, in addition to the fill that is replaced,
14 causing severe impacts on all trees located in the interior of the lot. He discussed
15 several trees identified by the City Arborist as being potentially dangerous, adding
16 that the applicant would like to receive permission for emergency tree removal for
17 these particular trees.

18
19 Commissioner Heckman mentioned Mr. Pruitt's reference to willow trees,
20 observing that none are indicated for preservation. He questioned whether Mr.
21 Pruitt had ever seen tree wells that actually still function at the end of five years.

22
23 Mr. Pruitt concurred with Commissioner Heckman's reference to problems with
24 tree wells, adding that they create difficulties. He suggested improvements to the
25 grading plan that may alleviate this problem, as well as providing that the City
26 Arborist be on site to attempt to preserve as many perimeter trees as possible.

27
28 Commissioner Heckman observed that as a member of another group that is
29 responsible for architectural review, he has not dealt with tree wells in about
30 seven years.

31
32 Mr. Pruitt indicated that the area will not include a ditch and will have the
33 appearance of somebody's back yard, with a drainpipe underneath the soil and a
34 fifteen-foot wide public easement providing access for the City, if necessary. He
35 mentioned that the surface of the ground will also have small catch basins, most
36 likely approximately one foot in diameter and spaced up and down the storm line
37 allowing the water that accumulates on the surface to run onto the property. On
38 question, he informed Commissioner Heckman that the water would be directed
39 to that area.

40
41 Chairman Maks questioned the method for making certain that these catch basins
42 actually work.

43
44 Mr. Pruitt advised Chairman Maks that part of the function of the catch basin is
45 that while they sometimes plug up, it is necessary to make certain that the catch
46 basin area is adequate.

1 Chairman Maks observed that the issue is a Tree Preservation Plan and the
2 conversation is again getting off-track.

3

4 Commissioner Voytilla requested clarification that Mr. Pruitt is indicating that all
5 of the trees need to be removed and that virtually nothing significant can be
6 preserved.

7

8 Mr. Pruitt concurred with Commissioner Voytilla, noting that pad preparation is
9 the process that essentially causes the demise of most of the trees.

10

11 Chairman Maks questioned whether the removal of all trees would help to
12 facilitate proper placements and appropriate processes for addressing the water
13 issue. He pointed out that the wet stuff appears to be the greatest issue to the
14 neighbors, and requested clarification of whether preserving the trees will
15 interfere with the process of alleviating the water problem.

16

17 Mr. Pruitt advised Chairman Maks that retaining the trees on the interior of the
18 property interferes with the excavation of the organic materials, making it
19 impossible to build the pads up and that necessary grading can not be done to
20 prepare for home development.

21

22 Commissioner Voytilla questioned whether an accurate tree survey has actually
23 been done on the site.

24

25 Mr. Pruitt advised Commissioner Voytilla that while they have not actually
26 surveyed the site, they have done some corners and determined some of the
27 elevations necessary to prepare a rough-grading plan.

28

29 Commissioner Voytilla stated that we don't really know where the trees that have
30 been proposed for preservation are actually located.

31

32 Mr. Pruitt informed Commissioner Voytilla that he is correct, these particular
33 trees have not been specifically tied yet to a survey, adding that this is necessary
34 prior to moving ahead with any final development application.

35

36 Commissioner Voytilla questioned whether alternatives potentially available
37 through the planned unit development process had been explored.

38

39 Mr. Pruitt informed Commissioner Voytilla that they had investigated the
40 possibilities of one or two lots or a cluster, adding that as soon as development is
41 initiated on this tract, USA's requirements for vegetated corridors kick in,
42 providing that whatever wetland is retained on site requires an additional fifty feet
43 of vegetated corridor surrounding it. He mentioned that this particular site is so
44 restricted that without totally eliminating the resource, it is not possible to achieve
45 any development.

46

1 Commissioner Heckman questioned whether the applicant had discussed with
2 staff the possibility of removal of trees and replacement at a ratio of four or five to
3 one.

4
5 Mr. Pruitt informed Commissioner Heckman that this possibility had not been
6 considered, and explained the mitigation process with the school.

7
8 Commissioner Heckman observed that Mr. Pruitt is referring to mitigation trees,
9 while he is discussing the four trees that had been singled out by staff.

10
11 Chairman Maks clarified that this would involve the removal of four trees in one
12 area and the addition of twenty-five trees elsewhere on the site.

13
14 Commissioner Heckman explained that the ratio is typically three to one or four
15 to one.

16
17 Mr. Pruitt stated that this had not been discussed.

18
19 Chairman Maks questioned whether the applicant would be willing to consider
20 this alternative to preserving the four trees.

21
22 Mr. Pruitt indicated that if this is necessary to allow for the removal of the four
23 trees the applicant would be willing to consider replacing the four trees at a
24 desired ratio.

25
26 Chairman Maks indicated that this might provide an easier solution to the
27 problem.

28
29 Mr. Pruitt suggested that the City Arborist and the contractor's arborist should
30 work together during the grading process to determine how many perimeter trees
31 can be retained.

32
33 Chairman Maks expressed his appreciation of the good presentation of the
34 applicant.

35
36 **PUBLIC TESTIMONY:**

37
38 **PAT RUSSELL**, 16308 SW Estuary Drive #208 (King's Court Apartment
39 Homes), Beaverton, OR 97006, testified on behalf of the NAC. He stated that it
40 would have been enlightening for the neighborhood to have available to them the
41 information that had been presented this evening, adding that the NAC would
42 benefit from having staff member come out to the neighborhood and explain the
43 process, the proposal of the developer and the responsibilities of the Planning
44 Commission in the tree preservation process. He mentioned that the NAC had
45 encouraged Mayor Drake to provide staff liaisons for planning purposes. He

1 emphasized that while the NAC has taken no position on this particular proposal,
2 they respect and understand the complexity and technical aspects of the issue.

3

4 Commissioner Dunham advised Mr. Russell that she has met the NAC Co-Chair,
5 Joann Eden, adding that she is thoroughly impressed with the efforts of the NAC
6 and would definitely encourage contact with the City again. She mentioned
7 excellent results that have resulted from having a representative from the Planning
8 Department discuss various issues with the NAC, and suggested that the applicant
9 should also make a presentation.

10

11 Chairman Maks requested that staff identify with the neighborhood at which stage
12 of the process which argument is applicable. Observing that the issue tonight is
13 the tree preservation plan, he emphasized that to be effective it is necessary to
14 focus on the relevant issues.

15

16 Commissioner Voytilla referred to a letter submitted by the NAC, requesting
17 clarification that Mr. Russell is not actually the Chairman of this NAC.

18

19 Mr. Russell advised Commissioner Voytilla that while he is not the Chairman of
20 this NAC, he is the NAC's representative to CCI.

21

22 Commissioner Voytilla referred to Mr. Russell's testimonial card, observing that
23 it indicates that he is representing himself.

24

25 Mr. Russell informed Commissioner Voytilla that he has submitted two cards, one
26 representing himself and one representing the NAC, pointing out that he is
27 wearing two separate hats in these two separate capacities.

28

29 Commissioner Voytilla requested whether the letter had been actually originated
30 by the NAC.

31

32 Mr. Russell advised Commissioner Voytilla that the letter represents a response of
33 the NAC, commenting that the core group of the NAC have worked together for
34 approximately one year and that this NAC does cover a significant area, ranging
35 from Sunset Highway to Tualatin Valley Highway.

36

37 Chairman Maks reminded Mr. Russell that members of the NACs are welcome to
38 attend work sessions, observing that this is a good learning experience. He
39 emphasized that the City of Beaverton has limited staff and staff time, adding that
40 land use changes every legislative session.

41

42 On question, Mr. Russell informed Commissioner Heckman that he is still in
43 favor of a continuance of this Public Hearing.

44

45 Mr. Russell reminded Chairman Maks that he had submitted two requests for the
46 opportunity to testify, on behalf of the NAC and on his own behalf, adding that he

1 does possess some understanding of the processes involved and will attempt to
2 limit his testimony. Mr. Russell expressed confusion with the process involved in
3 determining this particular significant stand of trees, and indicated a document
4 illustrating a history of the site. He questioned application of the five- percent
5 rule.

6
7 Chairman Maks advised Mr. Russell that the five- percent rule provides for five
8 percent of the original stand of trees.

9
10 Mr. Russell observed that he does not understand.

11
12 Chairman Maks requested that Mr. Russell allow him to complete his response,
13 pointing out that the stand had not been identified.

14
15 Emphasizing that he is speaking on his own behalf, rather than for the NAC, Mr.
16 Russell expressed his personal opinion that the entire process has been convoluted
17 into different procedures. He requested clarification of why this particular stand
18 of trees is significant, adding that this site has been literally destroyed by the
19 construction of Estuary Drive. He pointed out that this involves both significant
20 trees and a water resource, emphasizing that it is impossible to separate the two.
21 Concluding his comments, he expressed his opinion that the coffin has been
22 nailed on this particular application. Observing that Shapiro had participated in
23 preparing the City of Beaverton's Local Wetland Inventory, he pointed out that
24 they had also submitted this particular application and referred to a significant
25 wetland that had been removed from the map.

26
27 Chairman Maks reminded Mr. Russell that the issue is trees, not water.

28
29 Mr. Russell observed that he is concluding his testimony, and Chairman Maks
30 expressed his approval.

31
32 Mr. Russell observed that although the water is within a pipe, a wetland stream is
33 still present on that site and the stream is still running. He appealed to the sense
34 of history that this entire neighborhood has been obliterated by development,
35 emphasizing that the trees are vital to this wetland site.

36
37 Mr. Naemura referred to Mr. Russell's two distinct testimonies, commending him
38 for the use of visual aids in each capacity, clearly distinguishing when Mr. Russell
39 represented himself and when he represented the NAC.

40
41 Chairman Maks expressed appreciation of both testimonies provided by Mr.
42 Russell.

43
44 **DEE CARLSON**, 16750 SW Springwater Lane, Beaverton, OR 97006, stated
45 that her home is located immediately west of the property, adding that she will
46 attempt to address only the issue of the trees. She questioned the proper

1 procedure for registering a complaint regarding the cement-like substance that had
2 been dumped at the site.

3

4 Chairman Maks advised Ms. Carlson to call everybody in the world, observing
5 that he had a wetland that had nine bags of cement dumped in it. He pointed out
6 that the City told him to call Unified Sewerage, who had instructed him to call the
7 Army Corps of Engineers, who had told him to call someone else. He stated that
8 someone had attempted to dam up the wetlands and create their own pond and
9 that eventually the City had resolved the problem, although they had only
10 managed to remove about five of the nine bags of cement. He suggested that Ms.
11 Carlson be persistent if she expects any action.

12

13 Ms. Carlson expressed her concern with having a tree preservation hearing
14 without the benefit of an arborist, adding that the reports are contradictory and the
15 maps are wrong. She emphasized that there is very little resemblance between the
16 maps and what is actually there, expressing her opinion that the Public Hearing
17 should be continued. She noted that her husband and her have fought that
18 wetland for six years, noting that her concern with preserving some of the trees
19 involves leaving isolated, damaged and dangerous trees and that this is costly to
20 the adjoining property owners. She expressed her opinion that all of the trees
21 should be removed and replaced, and her concern with this particular builder who
22 has a history of promising things that never occur.

23

24 Chairman Maks expressed his appreciation to Ms. Carlson for her good
25 testimony, which had focussed on the actual issue.

26

27 Commissioner Voytilla indicated Ms. Carlson's property on the map and
28 questioned whether she would like a street tree added in the front of the other
29 trees are removed.

30

31 Ms. Carlson stated that while her neighborhood really wants to retain the trees,
32 her husband and her personally do not. She emphasized that the trees are very
33 important to the majority of the neighborhood.

34

35 Commissioner Voytilla questioned Ms. Carlson's rationale for not wanting the
36 trees in her neighborhood.

37

38 Ms. Carlson explained that in addition to safety issues, both she and her husband
39 had grown up in older neighborhoods, where street trees generally hid the houses
40 from view. She pointed out that they have landscaped their property very nicely
41 and would like the opportunity to display their efforts.

42

43 Commissioner Voytilla pointed out that the Carlson property makes up essentially
44 40% of the property that interfaces with Tract "L" on that particular side,
45 questioning whether Ms. Carlson would like street trees to replace the trees that
46 may be removed.

1 Ms. Carlson observed that they are obviously not real anxious to lose that
2 beautiful backdrop. She commented that there had been notification that the
3 people directly west had called the City concerning a tree, adding that they had
4 actually called because the builder had cut a dead tree with a very dull saw,
5 leaving behind some dangerous spikes. She noted that their concern had been
6 with the potential danger to children in the neighborhood from these spikes, rather
7 than an actual tree.
8

9 On question, Ms. Carlson informed Commissioner Heckman that although she is
10 not certain she clearly remembers this event from five years ago, it might have
11 been oak trees that came down during the windstorm.
12

13 Commissioner Heckman referred to her comment about not wanting street trees,
14 suggesting that this may be dependent upon the variety of trees.
15

16 Ms. Carlson emphasized that while she and her husband do not want the street
17 trees, the majority of the neighborhood does.
18

19 Commissioner Heckman commended Ms. Carlson for her good testimony.
20

21 Chairman Maks also complimented Ms. Carlson's good testimony, thanking her
22 for her efforts.
23

24 Mr. Cooper pointed out that he does not have the Neighborhood Review Meeting
25 available at this time, adding that this is a requirement for any Public Hearing, per
26 City Code Section 50.10. He described the rather long and tortuous history of this
27 particular application, noting that it originated in 1998 and due to lack of action,
28 actually sunsetted at one point. He stated that he believes that the Planning
29 Director had made a determination that the original Neighborhood Review
30 Meeting would be applicable, adding that he would have to research the situation.
31 He observed that a continuance would offer ample opportunity to supplement the
32 Staff Report, adding that while he has no further comments at this time, he is
33 happy to respond to questions.
34

35 Chairman Maks directed Mr. Cooper to determine whether any requirement for a
36 Neighborhood Meeting that was in effect at the time of the application has
37 actually been met.
38

39 On question, Mr. Russell informed Commissioner Heckman that the next NAC
40 Meeting is scheduled for Tuesday, July 11, 2000.
41

42 At the request of Chairman Maks, Mr. Cooper agreed to inform the applicant of
43 the advisability of bringing their arborist, adding that he will try to make certain
44 that the City Arborist is available as well.
45

1 On question, Chairman Maks informed Commissioner Barnard that Mr. Cooper is
2 dealing with the covenants and intents.

3
4 Commissioner Barnard referred to conflicting numbers on the cover sheet of the
5 application.

6
7 Chairman Maks clarified that the application number is TP 99-00008.

8
9 Mr. Naemura pointed out that a conversation with the applicant had resulted in
10 their willingness to stand by their previous waiver of the 120-day rule.

11
12 Commissioner Heckman **MOVED** and Commissioner Voytilla **SECONDED** a
13 motion that TPP 99-0008 – Waterhouse 5 Subdivision Modification Tree
14 Preservation Plan be continued to a date certain of July 26, 2000.

15
16 Motion **CARRIED**, unanimously.

17
18 **NEW BUSINESS:**

19
20 **A. TA 99-00015 – APPLICATION SUBMITTALS**

21 This City-initiated Development Code text amendment will standardize
22 application submittal requirements and add a provision for the enforcement of
23 conditions of approval, and will affect all development and properties within the
24 City of Beaverton.

25
26 Commissioner Dunham **MOVED** and Commissioner Heckman **SECONDED** a
27 motion to continue TA 99-00015 – Application Submittals to a date uncertain.

28
29 Motion **CARRIED** unanimously.

30
31 **APPROVAL OF MINUTES:**

32
33 Minutes of the meeting of May 17, 2000, submitted. Commissioner Dunham referred to
34 line 7, page 2, suggesting the following amendment: "...in the Development Code,
35 ~~although~~ the..."; and line 34, page 2, suggesting the following amendment: "resulting in
36 this being incomplete." Commissioner Heckman **MOVED** and Commissioner Dunham
37 **SECONDED** a motion that the minutes be approved as written and amended.

38
39 Motion **CARRIED**, unanimously, with the exception of Commissioner Barnard, who
40 abstained from voting on this issue.

41
42 **MISCELLANEOUS BUSINESS:**

43
44 The meeting adjourned at 10:21 p.m.

CALENDAR:

1				
2	July	19	Public Hearing	CUP 2000-0002
3				RZ 2000-0005 ANNEXATION RELATED AMENDMENT
4				CPA 99-00015
5				TA 99-00006 TITLE 3 WATER QUALITY, FLOOD MGMT.
6				CPA 99-00014
7				TA 99-00005 GOAL 5 RIPARIAN & WETLAND PROTECTION
8		26	Public Hearing	RZ 99-00020 CORNELL ROAD REZONE OF TAX LOT 100
9				TPP 99-00008 WATERHOUSE 5 SUBDIVISION MODIFICATIONS
10				CPA 2000-0003 COMPREHENSIVE PLAN TRANSPORTATION
11				ELEMENT MODIFICATION
12				APP 2000-0009 APPEAL OF HOP 2000-0002 CASCADE
13				ENFORCEMENT AGENCY
14	August	2	Public Hearing	CPA 99-00025 COMPREHENSIVE PLAN LAND USE ELEMENT
15				CPA 2000-0004
16				RZ 2000-0007 HALL & METZ PROPERTY
17				CUP 2000-0018 CITY LIBRARY CUP CONDITIONS OF APPROVAL
18				MODIFICATIONS
19		9	Public Hearing	CPA 99-00017
20				CPA 99-00018 TREE INVENTORY UPDATE
21				CPA 99-00013
22				TA 99-00004 WILDLIFE HABITAT & TREE PRESERVATION
23				RZ 2000-0006 HANDON ROAD & 135 TH AVENUE REZONE
24		23	Public Hearing	TA 2000-0004 TITLE 4 IMPLEMENTATION
25				TA 99-00006 FLOOD MAP REVISION
26				